

1
2
3
4
5
6
7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 RICKY SPADE,

11 Plaintiff,

No. CIV S-03-1041 PAN

12 vs.

13 JO ANNE B. BARNHART,
14 Commissioner of Social Security,

ORDER

15 Defendant.
16 _____/

17 Based on 42 U.S.C. § 406(b), counsel for plaintiff in the above-entitled action
18 seeks an award of attorney fees in the amount of \$7,987.56 for 30.65 hours of professional time
19 devoted to the representation of plaintiff before this court. Counsel concedes that this amount
20 should be offset in the amount of \$4,000.00 for fees previously awarded under EAJA.

21 42 U.S.C. § 406(b)(1)(A) provides, in relevant part:

22 Whenever a court renders a judgment favorable to a claimant under
23 this subchapter who was represented before the court by an
24 attorney, the court may determine and allow as part of its judgment
25 a reasonable fee for such representation, not in excess of 25 percent
26 of the total of the past-due benefits to which the claimant is entitled
by reason of such judgment.

Rather than being paid by the government, fees under the Social Security Act are awarded out of

1 the claimant's disability benefits. Russell v. Sullivan, 930 F.2d 1443, 1446 (9th Cir. 1991),
2 receded from on other grounds, Sorenson v. Mink, 239 F.3d 1140, 1149 (9th Cir. 2001).
3 However, the 25 percent statutory maximum fee is not an automatic entitlement; the court also
4 must ensure that the requested fee is reasonable. Gisbrecht v. Barnhart, 535 U.S. 789, 808-09
5 (2002) ("We hold that § 406(b) does not displace contingent-fee agreements within the statutory
6 ceiling; instead, § 406(b) instructs courts to review for reasonableness fees yielded by those
7 agreements."). "Within the 25 percent boundary ... the attorney for the successful claimant must
8 show that the fee sought is reasonable for the services rendered." Id. at 807.

9 Counsel seeks fees for 30.65 hours. Based on the quality of counsel's
10 representation and the results achieved in this case, the undersigned finds the amount of hours
11 expended to be reasonable. The hourly rate of \$260.61 is also reasonable. Accordingly, the
12 undersigned will recommend that the motion for attorney fees be granted.

13 Accordingly, IT IS HEREBY ORDERED that plaintiff's counsel is awarded
14 \$7,987.56 in attorney fees pursuant to 28 U.S.C. § 406, to be offset in the amount of \$4,000.00
15 previously awarded under EAJA.

16 DATED: May 30, 2006.

17
18 
19 UNITED STATES MAGISTRATE JUDGE

20 /001;spade.406
21
22
23
24
25
26